

made possible by the acquisition of TRW. Those foreclosures are in radar, electro-optical, and infrared technologies, and thus the Complaint filed in this case, and Final Judgment, are targeted at Northrop's conduct with relation to those payloads.

As for the other technologies Raytheon wishes to specify in the definition of Payload, the definition already covers "the assembly or assemblies on a Satellite that ... enable a Satellite to perform a specific mission," and specifically includes "all related components, software, interfaces, any other items within the assembly or assemblies that enable the Payload to perform its contemplated function, and all related technical data and information customarily provided by a Payload supplier to a Prime Contractor" The definition was made as broad as possible to ensure that Northrop's responsibilities are not simply to provide a sensor package, but a functioning, usable payload. The requirement that Northrop provide payloads does not, however, include an obligation that Northrop provide pieces or components of those payloads separate from the payload itself. To the extent that your concern is that Northrop as a prime contractor could migrate certain work traditionally done by the payload provider into the prime contractor responsibilities, such trade-offs could exist whether or not Northrop purchased TRW, and the required separation between the prime and payload businesses at Northrop may inhibit this from occurring. Further, the Compliance Officer should have the authority to resolve any disputes that arise in this regard, which may depend in large part on how the Department of Defense wants to run the program.

Raytheon's second point is that, under the Final Judgment, Northrop could refuse to separately sell its satellites to other potential prime contractors, including Raytheon, if it were to choose to compete as a prime. As noted above, the Complaint and Final Judgment target the possible anticompetitive effects created by the combination of Northrop's payload capabilities and TRW's prime contractor capabilities, and are not designed to force Northrop to make available selected components of either the payload or prime capabilities. This would include the provision of satellites as a separate product, as opposed to Northrop's making itself available to a payload competitor as a prime contractor.

Finally, you argue that Paragraph IV. C. of the Final Judgment, which protects from disclosure the "products and/or other results of ... joint investment or development activity" when the two Northrop businesses are teamed on a given project, should be modified to require Northrop to make available to competing teams all results of innovation by the Satellite Prime Business that are funded by the Satellite Prime Business, and all results of innovation by the Payload Business that are funded by the Payload Business. Thus, the protections of IV.C. would not apply to any investment or development to which both the Payload and Satellite Prime businesses contribute, even in a teaming context. Such a rule would strip away from Northrop basic intellectual property protections that Raytheon itself recognizes as important to protect. Raytheon's proposal would make funding source the sole criterion for determining whether a project is a joint undertaking, and this is far too narrow a definition. Teammates are often expected to invest their own funds to further the competitive abilities of a team, and that would be no less the case in a team including the two Northrop businesses. The language you propose